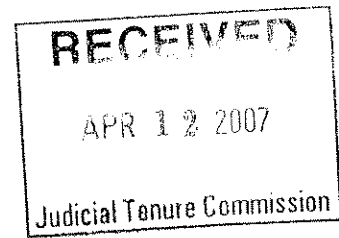


STATE OF MICHIGAN
BEFORE THE MICHIGAN JUDICIAL TENURE COMMISSION

IN THE MATTER OF:

HON. JEANETTE O'BANNER-OWENS
36th District Court
421 Madison
Suite 3068
Detroit, Michigan 48226

FORMAL COMPLAINT NO. 80



ANSWER TO COMPLAINT

Hon. Jeanette O'Banner-Owens, by her attorneys Reginald M. Turner, Jr. of Clark Hill PLC and Philip J. Thomas, answers Formal Complaint No. 80 (Complaint) as follows:

1. Judge O'Banner-Owens admits this paragraph. Judge O'Banner-Owens would add that she has faithfully served as a judge of Detroit's 36th District Court for approximately 19 years. Thousands of cases are assigned to her courtroom annually. The Commission has selected a total of seven of those cases, some of which date back nearly five years, and has filed some 32 pages of allegations based upon Judge O'Banner-Owens' rulings or decisions in those cases. The totality of the allegations made by the Commission are best refuted by the fact that despite its half-decade investigation, the Commission was only able to find seven cases where it had cause to dispute Judge O'Banner-Owens' conduct, and in those few cases the allegations primarily concern minor errors of law or procedure.

Significantly, although the Complaint charges Judge O'Banner-Owens with being prejudiced/biased against litigants because of their race, residence or other characteristics, it is Judge O'Banner-Owens who has been the subject of such conduct at the hands of the Commission. Judge O'Banner-Owens has never uttered one word that refers to the race or ethnic origin of any litigant or attorney in any of the matters cited in the Complaint. The conclusory allegations that her references to the residence of parties, or the locations at which relevant activities took place, are misconduct are meritless. Such references are in fact relevant to jurisdictional issues and/or perfectly consistent with relevant findings of fact in the cases at issue, and are far from misconduct and no basis for discipline.

Finally, the lack of merit in the Complaint is best exemplified by the allegations concerning religious references in informal speech by Judge O'Banner-Owens in casual conversations outside her courtroom as a basis for misconduct charges. Prosecution of a public servant for religious speech in this context is a violation of the United States Constitution, Amend 1.

2. Judge O'Banner-Owens admits this paragraph.

COUNT I: DEMEANOR/INAPPROPRIATE COMMENTS

3. Judge O'Banner-Owens denies this paragraph as being untrue. Judge O'Banner-Owens has been a judge for nearly two decades. The seven cases referenced in the Complaint comprise a miniscule percentage of the cases Judge O'Banner-Owens has handled. Therefore, the Commission's use of the word "frequently" to describe the charged conduct is a distortion at best and a

misrepresentation at worst. Judge O'Banner-Owens also incorporates her response to Paragraph 1.

A. (*Evelyn Dubose v Honda Collier and Gary King*, Case No. 05-201411 SC)

- (1) Judge O'Banner-Owens admits this paragraph, and would add the following. The defendants prevailed before Magistrate Thomas Shannon in small claims court. The plaintiff appealed the magistrate's ruling, which is how the case came before Judge O'Banner-Owens. The only knowledge Judge O'Banner-Owens has of the facts of the case is based upon what occurred at the July 1, 2005 hearing she presided over.
- (2) Judge O'Banner-Owens neither admits nor denies this paragraph, as she has no personal knowledge of whether Gary King and Honda Collier are married.
- (3) Judge O'Banner-Owens admits this paragraph.
- (4) Judge O'Banner-Owens admits this paragraph.
- (5) Judge O'Banner-Owens admits this paragraph.
- (6) Judge O'Banner-Owens denies this paragraph in the form stated. Although Judge O'Banner-Owens admits that the quoted remarks are contained in the July 1, 2005 transcript, she denies that those statements are evidence of misconduct. Judge O'Banner-Owens would add that it is her recollection that Ms. Collier was a very rude, disrespectful, and irate

litigant. Appended as Exhibit 1 is a statement provided by the plaintiff, Evelyn Dubose, which was obtained during the Commission's original investigation of this matter.

- (7) Judge O'Banner-Owens denies this paragraph. Judge O'Banner-Owens incorporates her response to Paragraph 6, above. Judge O'Banner-Owens would add that the transcript reflects merely the printed version of the hearing. It does not reflect the rude, disrespectful tone or gestures being used by the defendant.
- (8) Judge O'Banner-Owens denies this paragraph in the form stated. Although Judge O'Banner-Owens did make some extraneous references, those remarks were not suggestive of any immoral actions on Ms. Collier's part.
- (9) Judge O'Banner-Owens admits this paragraph in part and denies it in part. Judge O'Banner-Owens admits that she awarded Ms. Dubose damages that exceeded both the amount claimed and the amount Judge O'Banner-Owens calculated. Judge O'Banner-Owens admits that she did advise Ms. Collier to "[s]tay off [Ms. Dubose's] property." Judge O'Banner-Owens denies that she demonstrated "excessive" concern for the plaintiff. The plaintiff, Ms. Dubose, was intimidated by Ms. Collier, and Judge O'Banner-Owens advised Ms. Dubose to remain in the courtroom, "[s]it down and leave it alone for a while." Judge O'Banner-Owens further denies that any of her statements are evidence of misconduct. Judge O'Banner-Owens

would add further that to the best of her knowledge, information, and belief, all of the parties in this civil case were African-American. That fact is critical because at the conclusion of Count I, in paragraph 4(n) the Commission has charged Judge O'Banner-Owens (who is African-American) with treating parties differently because of their race or other protected personal characteristic.

B. (*Tonya M. Thomas-Barnes v Cassandra Marshall*, Case No. 04-202751)

- (1) Judge O'Banner-Owens admits this paragraph.
- (2) Judge O'Banner-Owens admits this paragraph. Judge O'Banner-Owens further states that to the best of her recollection, she asked the referenced question based upon a notation on the file and/or some other document, and to assist with her determination regarding the amount of time to allot for a bench trial, and what type of evidence would be introduced. In response to the question regarding whether the subject property was sold at a sheriff's sale, the parties began a series of exchanges stating their respective positions before the Court. Judge O'Banner-Owens was respectful and gave each side an opportunity to respond to the allegations being made by the other side.
- (3) Judge O'Banner-Owens denies this paragraph. At the June 27, 2005 final conference, the matter was scheduled for a bench trial on August 29, 2005. Judge O'Banner-Owens informed the parties of their right to a jury trial. When Ms. Marshall expressed concern regarding the cost of the jury

fee, Judge O'Banner-Owens accordingly informed Ms. Marshall and Ms. Barnes of their right to have a bench trial. At page 5 of the transcript Ms. Marshall states:

Can you disregard the jury? Because, like I said, I don't want to pay the fee for that. Are you able to disregard the jury because I'm unable to pay the fee for that?

It was never Judge O'Banner-Owens' intent to try this matter without giving the parties the opportunity to present their evidence. On several occasions, Judge O'Banner-Owens informed the parties of the purpose of the June 27, 2005 hearing and advised the parties of the course of events that would follow. The fact that Judge O'Banner-Owens did not intend to try this matter at the June 27, 2005 hearing is evidenced at page 6 of the transcript when the following exchange occurred between Ms. Barnes and Judge O'Banner-Owens:

MS. BARNES: Yes, that's my portion there that I want to describe. Judge, also, I was under the impression today would be the final day in which will be, the trial would be full taken care of. That's the impression I got last time.

THE COURT: No, on your notice it says April 21st was considered the pretrial date. The final pretrial conference will be held June 27, 2005. On that date we will set the trial date, which we did. So, it's August 29th, so that everybody will be able to go forward and notify your witnesses, and that is our trial date? This was sold in a Sheriff's Sale?

Judge O'Banner-Owens did not view the matter as a trial, nor did she ever

inform the parties that they would not be afforded an opportunity to proceed with a trial if that was their choice.

- (4) Judge O'Banner-Owens denies this paragraph. The transcript reveals that Ms. Marshall provided testimony and evidence for almost eleven pages. Judge O'Banner-Owens also denies the allegation that she made incorrect assumptions and remarks suggesting prejudgment against Ms. Marshall without having heard or understood the facts. Judge O'Banner-Owens denies the allegation that she exhibited a sarcastic demeanor toward Ms. Marshall.
- (5) Judge O'Banner-Owens admits this paragraph. Judge O'Banner-Owens would add that the parties began a series of exchanges stating their respective positions before Judge O'Banner-Owens. Judge O'Banner-Owens was respectful and gave each side an equal opportunity to respond to the allegations being made by the other side. During the course of the hearing several issues were presented which indicated that Ms. Marshall had no cause of action and further indicated that she filed a frivolous suit against Ms. Barnes. Based upon Ms. Marshall's own admissions and documentary evidence, Judge O'Banner-Owens made a determination that her claim was moot. At the end of the hearing, Judge O'Banner-Owens made a determination that the matter did not need to be set for trial.

The totality of the transcript proves that it was the parties who sought to have the matter decided on the legal issues at the hearing held before Judge O'Banner-Owens. Further, Ms. Marshall appealed Judge O'Banner-Owens' decision in this matter. Judge Susan D. Borman dismissed Ms. Marshall's appeal on September 12, 2005. Judge O'Banner-Owens denies that any of the above is evidence of misconduct. She would add further that to the best of her knowledge, information, and belief, all of the parties in this civil case were African-American. That fact is critical because in Count I, paragraph 4(n), the Commission has charged Judge O'Banner-Owens with treating parties differently because of their race or another protected personal characteristic.

C. (*BDB Properties, LLC v Khadijah Ahmad*, Case No. 04-145195)

- (1) Judge O'Banner-Owens admits this paragraph. The defendant filed objections to a garnishment on April 18, 2005, and a hearing was scheduled for May 4, 2005. The satisfaction of judgment was filed on April 25, 2005, after plaintiff filed objections to the garnishment. On May 2, 2005, plaintiff filed a response to defendant's objections. The hearing was held on May 4, 2005. At the hearing, defendant objected to the garnishment because she had previously paid the monies owing to plaintiff. Judge O'Banner-Owens granted defendant's objections and ordered that plaintiff return \$2,743.18 to defendant.

Judge O'Banner-Owens' act of ordering the return of the \$2,743.18 to the defendant may have been done in error, as is apparently evidenced by the fact that her decision was overturned on appeal. However, even if one assumed that Judge O'Banner-Owens erred in ordering the return of the monies, that is not evidence of misconduct. The defendant was claiming that she paid the money twice and Judge O'Banner-Owens believed her. Judge O'Banner-Owens further denies that any of the above actions are evidence of misconduct.

- (2) Judge O'Banner-Owens denies this paragraph. At no time did Judge O'Banner-Owens disparage anyone.

D. Prior Incidents: (a) *Miller v Singh*, Case No. 2001-20290 and (b) *Maxtara Contractors Inc v Hernetha [sic] Hamilton*, Case No. 2003-201587

(a) *Miller v Singh*, Case No. 2001-20290

Allegations concerning the *Miller* case were first brought to Judge O'Banner-Owens' attention by the Commission in April of 2003 based upon of a request for investigation issued to her. In June of 2003 Judge O'Banner-Owens answered the request for investigation and denied all allegations of misconduct contained therein. Further, on October 15, 2003, the Commission dismissed the request for investigation with an admonitory letter. The Commission's dredging up this allegation at this time is inappropriate and is violative of Judge O'Banner-Owens' due process rights, as is more particularly set forth in Judge O'Banner-Owens' affirmative defenses.

- (1) Judge O'Banner-Owens denies this paragraph. Although Judge O'Banner-Owens admits that the quoted remarks are contained in the October 12, 2001 transcript, Judge O'Banner-Owens denies that those statements are evidence of misconduct. Jay Singh was acting inappropriately and Judge O'Banner-Owens had to address his conduct.
- (2) Judge O'Banner-Owens denies this paragraph. Judge O'Banner-Owens briefly (for a moment or two) held Mr. Singh in contempt because he interrupted her. Mr. Singh was not put in jail, nor was he fined. Judge O'Banner-Owens asked Mr. Singh to "have a seat in the box."
- (3) Judge O'Banner-Owens denies this paragraph. Judge O'Banner-Owens denies that she disparaged Mr. Singh. Although Judge O'Banner-Owens admits that the quoted remarks are contained in the August 21, 2002 transcript, Judge O'Banner-Owens denies that those statements are evidence of misconduct. Judge O'Banner-Owens would add that the transcript only reflects the written word, and does not disclose the tenor of Mr. Singh's comments, or his gestures.
- (b) ***Maxtara Contractors, Inc., d/b/a Bathtub Liners of Michigan, Inc., v. Hernietha Hamilton, Case No. 03-201587***

Allegations concerning the *Maxtara Contractors, Inc.* case were first brought to Judge O'Banner-Owens' attention in July of 2004 upon the Commission's issuance of a request for investigation. In September of 2004 Judge O'Banner-Owens answered the request for investigation and

denied all allegations of misconduct contained therein. Further, on December 15, 2004, the Commission dismissed the request for investigation with an admonition. The Commission's dredging up this allegation at this time is inappropriate and is violative of Judge O'Banner-Owens' due process rights, as is more particularly set forth in her affirmative defenses.

- (1) Judge O'Banner-Owens denies this paragraph in the form stated. The allegation appears to be a summary of events before a magistrate and mentions a paragraph later in the Complaint.
- (2) Judge O'Banner-Owens denies this paragraph. Mr. Oslund was not "unjustifiably" threatened with contempt. It is Judge O'Banner-Owens' recollection that Mr. Oslund interrupted her and addressed her in a brusque and rude manner at the hearing. She cautioned him that a repetition of his conduct would result in sanctions. Judge O'Banner-Owens also denies that her decision to set aside the garnishment was made "arbitrarily." Her decision to grant the relief sought by the defendant may have been wrong, however, it was not made arbitrarily. She believed at the time that Maxtara did not have the right to appear without counsel, and it is her recollection that this was the basis of her decision. Further, on August 28, 2003, the defendant filed a motion to make periodic payments on the judgment obtained by Maxtara. That motion was granted on

September 22, 2003. The defendant was ordered to pay \$50.00 to Maxtara each month. Maxtara was not denied its judgment.

E. Miscellaneous Inappropriate Comments

- (1) Judge O'Banner-Owens denies this paragraph as untrue. Judge O'Banner-Owens denies that she frequently makes disparaging comments to litigants, court employees, and others.
- (2) Judge O'Banner-Owens denies this paragraph in the form stated. There is no context to the remarks, no dates provided, or names of persons to whom such remarks were made.
- (3) Judge O'Banner-Owens denies this paragraph in the form stated. Remarks of the type cited are not evidence of judicial misconduct. Moreover, any discipline of Judge O'Banner-Owens on the basis of religious speech uttered outside her courtroom in informal conversations with colleagues would be a violation of her rights under the United States Constitution, Amend 1. Further, there is no context to the remarks, no dates provided, or names of persons to whom such remarks were made. Judge O'Banner-Owens is close friends with many of the judges at 36th District Court and in fact has taken part in religious services with many of her colleagues. Such remarks, if made, would have been personal and would not have anything to do with court business.

4. Paragraphs 4(a)-(r) contain legal conclusions which do not require an answer.

To the extent that the Master or Commission feels that an answer is required, all of the legal conclusions are denied as being untrue.

COUNT II: LACK OF KNOWLEDGE/INCOMPETENCE

5. Judge O'Banner-Owens denies this paragraph as untrue. Judge O'Banner-Owens also incorporates her response to Paragraph 1.

A. (*People v Evuard Roovell Lazar*, Case No. 525985)

- (1) Judge O'Banner-Owens admits this paragraph.
- (2) Judge O'Banner-Owens admits this paragraph.
- (3) Judge O'Banner-Owens admits this paragraph.
- (4) Judge O'Banner-Owens denies this paragraph as untrue. Although Judge O'Banner-Owens admits the quoted statements are in the transcript, and that she may have misspoke, she denies that such remarks are evidence of judicial misconduct. Significantly, MCR 6.301(B) states that a "defendant may enter a plea of nolo contendere only with the consent of the court." Therefore, Judge O'Banner-Owens had the discretion (as would any judge) to refuse to accept a no contest plea.
- (5) Judge O'Banner-Owens denies this paragraph as untrue.

B. (*Evelyn Dubose v Honda Collier and Gary King*, Case No. 05-201411 SC)

- (1) Judge O'Banner-Owens admits this paragraph.

- (2) Judge O'Banner-Owens denies this paragraph as untrue.
- (3) Judge O'Banner-Owens admits this paragraph.
- (4) Judge O'Banner-Owens denies this paragraph in the form stated. Judge O'Banner-Owens did not "insist[]" on anything. Judge O'Banner-Owens was required to make a decision and she did so.
- (5) Judge O'Banner-Owens admits this paragraph.
- (6) Judge O'Banner-Owens admits this paragraph. After hearing the evidence, Judge Bradfield did reduce the award. He also affirmed Judge O'Banner-Owens' decision and ruled in Ms. Dubose's favor. (See Exhibit 2, which is a copy of Judge Bradfield's Judgment.)

C. (*Tonya M. Thomas-Barnes v Cassandra Marshall*, Case No. 04-202751)

- (1) Judge O'Banner-Owens admits this paragraph.
- (2) Judge O'Banner-Owens denies this paragraph. Judge O'Banner-Owens incorporates her response to Paragraph 3(B)(3).
- (3) Judge O'Banner-Owens denies this paragraph. There is no evidence that Judge O'Banner-Owens prejudged the matter.
- (4) Judge O'Banner-Owens admits this paragraph. Judge O'Banner-Owens incorporates her response to Paragraph 3(B)(5).

D. (*BDB Properties, LLC v Khadijah Ahmad*, Case No. 04-145195)

- (1) Judge O'Banner-Owens admits this paragraph.
- (2) Judge O'Banner-Owens admits this paragraph.
- (3) Judge O'Banner-Owens admits this paragraph.
- (4) Judge O'Banner-Owens denies this paragraph in the form stated. Judge O'Banner-Owens denies that she "was unable to grasp the situation." Judge O'Banner-Owens asked a question regarding the sequence of events. Ms. Ahmad corrected Judge O'Banner-Owens' understanding of that sequence. Judge O'Banner-Owens merely misspoke.
- (5) Judge O'Banner-Owens denies this paragraph as untrue. Judge O'Banner-Owens has distinguished herself as an attorney and a judge, and for the Commission to state that she could not "comprehend" the issue at hand is offensive and shows an inherent bias and prejudice against Judge O'Banner-Owens.

E. Prior Incidents: (a) *Miller v Singh*, Case no. 2001-20290 and (b) *Maxtara Contractors Inc v Hernetha* [sic] *Hamilton*, Case No. 2003-201587

(a) *Miller v Singh*, Case No. 2001-20290

Judge O'Banner-Owens incorporates her answer to Paragraph 3(D)(a).

- (1) Judge O'Banner-Owens denies this paragraph. Although Judge O'Banner-Owens admits that the quoted remarks are contained in the October 12, 2001 transcript, Judge O'Banner-Owens denies that those

statements are evidence of misconduct. Further, when Judge O'Banner-Owens first answered to these allegations back in 2003, the undersigned obtained an affidavit (Exhibit 3) from Corey Miller, the plaintiff in the *Miller* case. In his affidavit, Mr. Miller describes Mr. Singh as speaking English "very well" and as being able to articulate what he wanted to say at all times. Mr. Miller also stated that he does not believe that Judge O'Banner-Owens "was biased or prejudiced against [Mr. Singh] because he may be from another country, or speaks with an accent." Mr. Miller described Mr. Singh as being "a very dishonest man." It is significant to note that Mr. Miller states further that Mr. Singh tried to "cheat him" and may have discriminated against him (Mr. Miller) because he (Mr. Miller) is African-American.

Mr. Miller eventually retained Attorney Wendy Barnwell to represent him at hearings before Judge O'Banner-Owens on June 21, 2002 and August 21, 2002. In an affidavit (also obtained when the grievance was first being investigated) Attorney Barnwell disputes any suggestion that Judge O'Banner-Owens acted inappropriately towards Mr. Singh, stating:

At hearings held before Judge Jeanette O'Banner-Owens on June 21, 2002 and August 21, 2002, Judge Owens treated all parties with courtesy and respect.

At no time during the hearings held on June 21, and August 21, 2002, did Judge Owens display bias or prejudice against Defendant Jay Singh or anyone else involved in the case.

* * *

During the proceedings held before Judge Owens, Mr. Singh took positions that were not only without a legal basis, but were ridiculous as well.

See Exhibit 4.

Judge O'Banner-Owens was obligated to decide the appeal brought before her. She decided the case against Mr. Singh because she felt his position was not supported by the facts and applicable law.

On the first appeal to Wayne County Circuit Court, Circuit Judge John Murphy affirmed Judge O'Banner-Owens' decision in part and remanded in part (see Exhibit 5). When Judge O'Banner-Owens ruled in favor of Mr. Miller again on the remanded issues, Mr. Singh again appealed to Judge Murphy, who again affirmed Judge O'Banner-Owens, but remanded on narrow issues (see Exhibit 6). Dissatisfied with Judge Murphy's decisions, Mr. Singh filed a motion for reconsideration, which was denied. Mr. Singh then appealed Judge Murphy's decision to the Michigan Court of Appeals. Based upon information and belief, Mr. Singh's appeals to circuit court and the court of appeals were not proper, as such appeals are prohibited by small claims court rules.

(b) *Maxtara Contractors, Inc., d/b/a Bathtub Liners of Michigan, Inc., v. Hernietha Hamilton, Case No. 03-201587*

Judge O'Banner-Owens incorporates her answer to Paragraph 3(D)(b).

- (1) Judge O'Banner-Owens admits this paragraph in part and denies it in part.
Judge O'Banner-Owens admits the allegation that she committed legal

error, and would add that she made a mistake in her application of the general civil rule in Michigan that a corporation must be represented by counsel in court proceedings. Judge O'Banner-Owens would add that her confusion stemmed from the fact that the small claims judgment was entered by a magistrate and the matter was before Judge O'Banner-Owens on a post-judgment matter. Therefore, she mistakenly believed that general civil rules applied. Judge O'Banner-Owens denies the allegation that she unjustifiably threatened the plaintiff's representative, Jeffrey Oslund, with contempt. It is Judge O'Banner-Owens's recollection that Mr. Oslund interrupted her and addressed her in a discourteous manner at the hearing. Judge O'Banner-Owens cautioned Mr. Oslund that a repetition of his conduct would result in sanctions. She specifically cautioned Mr. Oslund to "watch [his] demeanor."

- (2) Judge O'Banner-Owens admits this paragraph in part and denies it in part. Judge O'Banner-Owens admits the allegation that Mr. Oslund appeared before her on behalf of the plaintiff. Judge O'Banner-Owens denies the allegation that she denied the plaintiff its day in court. She also denies the allegation that she "ignored" a motion to reconsider and to have the matter removed from small claims court to district court. Significantly, at the August 26, 2003 hearing, there was no motion for reconsideration or request for removal from small claims to district court even pending before Judge O'Banner-Owens. Contrary to the Commission's allegations, those two matters were not even filed by Mr. Oslund until October, 2003.

- (3) Judge O'Banner-Owens admits this paragraph. Judge O'Banner-Owens incorporates her answer to Paragraph 5(E)(b)(1).
- (4) Judge O'Banner-Owens admits this paragraph in part and denies it in part. Judge O'Banner-Owens acknowledges that her position regarding the obligation to retain counsel was incorrect and incorporates her answer to Paragraph 5(E)(b)(1). Judge O'Banner-Owens denies that she threatened Mr. Oslund with contempt "for no reason." She denies that her decision to set aside the garnishment was made "arbitrarily."
- (5) Judge O'Banner-Owens admits that the quoted remarks are contained in the transcript. Judge O'Banner-Owens denies that those statements are evidence of misconduct. Judge O'Banner-Owens incorporates her answer to Paragraph 5(E)(b)(1).
- (6) Judge O'Banner-Owens admits this paragraph. Although Judge O'Banner-Owens admits that the quoted remarks are contained in the transcript, Judge O'Banner-Owens denies that those statements are evidence of misconduct. Judge O'Banner-Owens incorporates her answer to Paragraph 5(E)(b)(1).
- (7) Judge O'Banner-Owens admits that the quoted remarks are contained in the transcript. Judge O'Banner-Owens denies that those statements are evidence of misconduct. Further, when Judge O'Banner-Owens makes such referrals, she usually refers individuals to the Detroit Bar Association

and the Wolverine Bar Association. She does so because both associations are local and both operate lawyer referral services. Judge O'Banner-Owens makes such referrals to local bar associations as a courtesy to litigants. In this case, the referral was consistent with Judge O'Banner-Owens' understanding of the procedural posture of the case as set forth in her answer to Paragraph 5(E)(b)(1).

- (8) Judge O'Banner-Owens incorporates her answer to Paragraph 5(E)(b)(1).
- (9) Judge O'Banner-Owens admits this paragraph in part and denies it in part. Judge O'Banner-Owens admits that Mr. Oslund made the statements attributed to him. She denies that she challenged his statement, threatened him with contempt, or acted improperly. Although Judge O'Banner-Owens admits that the quoted remarks are contained in the transcript, Judge O'Banner-Owens denies that those statements are evidence of misconduct. Judge O'Banner-Owens incorporates her answer to Paragraph 5(E)(b)(1) and 5(E)(b)(4).
- (10) Judge O'Banner-Owens denies this paragraph as being untrue.
- (11) Judge O'Banner-Owens denies this paragraph as untrue. Judge O'Banner-Owens incorporates her answer to Paragraph 5(E)(b)(1).
- (12) Judge O'Banner-Owens denies this paragraph in the form stated. Judge O'Banner-Owens incorporates her answer to Paragraph 5(E)(b)(1).

6. Paragraphs 6(a)-(r) contain legal conclusions which do not require an answer.

To the extent that the Master or Commission feels that an answer is required, all of the legal conclusions are denied as being untrue.

COUNT III: ETHNOCENTRIC REMARKS/BIAS

7. Judge O'Banner-Owens denies this paragraph as untrue. Further, Judge O'Banner-Owens incorporates her answer to Paragraph 1.

A. (*People v Evuard Roovell Lazar*, Case No. 525985)

(1) Judge O'Banner-Owens denies this paragraph as untrue. Although Judge O'Banner-Owens admits that the quoted remarks are contained in the transcript, Judge O'Banner-Owens denies that those statements are evidence of misconduct. Mr. Lazar was a drunk driver. If Mr. Lazar had truly injured the innocent victim of an accident that he caused, Judge O'Banner-Owens did not want to afford a drunk driver an advantage over the victim of such a crime. Judge O'Banner-Owens never mentions Mr. Lazar's race or that of the victim during the proceedings. Mr. Lazar's race had absolutely nothing to do with Judge O'Banner-Owens' decision, nor did the fact that Mr. Lazar was not a resident of Detroit. Judge O'Banner-Owens also incorporates her answer to Paragraph 1. A defendant may not plead "no contest" to a criminal charge without court approval. Judge O'Banner-Owens was well within her discretion in refusing to accept the no contest plea. See MCR 6.301(B).

- (2) Judge O'Banner-Owens denies this paragraph. Judge O'Banner-Owens incorporates her answer to Paragraph 1.

B. Prior Incidents: *Miller v Singh*, Case No. 2001-20290 and *Maxtara Contractors Inc v Hernetha [sic] Hamilton*, Case No. 2003-201587

- (1) Judge O'Banner-Owens denies this paragraph as untrue. There is no "pattern of ethnocentric remarks." Judge O'Banner-Owens incorporates her response to Paragraph 1.

(a) Judge O'Banner-Owens denies this paragraph. Judge O'Banner-Owens incorporates her answer to Paragraph 1 and Paragraph 5(E)(a)(1).

(b) Judge O'Banner-Owens denies this paragraph. Judge O'Banner-Owens incorporates her answer to Paragraph 1 and Paragraph 5(E)(a)(1).

(c) Judge O'Banner-Owens denies this paragraph. Although Judge O'Banner-Owens admits that the quoted remarks are contained in the transcript, Judge O'Banner-Owens denies that those statements are evidence of misconduct. Her reference to the City of Troy, in context, was actually a reassurance to the litigant that the fact that he was from another jurisdiction and being heard in Detroit did not change the applicable law or affect her ruling in any way.

(2) Judge O'Banner-Owens denies this paragraph as untrue. Judge O'Banner-Owens incorporates her answer to Paragraph 1.

(a) Judge O'Banner-Owens admits this paragraph.

(b) Judge O'Banner-Owens admits this paragraph in part and denies it in part. Judge O'Banner-Owens admits that she referred the plaintiff to the Wolverine Bar Association. She denies the remainder of the allegations in this paragraph. Judge O'Banner-Owens incorporates her response to Paragraph 5(E)(b)(7).

(c) Judge O'Banner-Owens admits this paragraph in part and denies it in part. Judge O'Banner-Owens admits that the quoted remark is contained in the transcript. She denies that her remark is evidence of misconduct. Judge O'Banner-Owens denies that her comments suggested bias.

(d) Judge O'Banner-Owens admits this allegation.

(e) Judge O'Banner-Owens admits this paragraph in part and denies it in part. Judge O'Banner-Owens admits that Ms. Hamilton indicated that she was not at the hearing. Judge O'Banner-Owens admits that the quoted remarks are contained in the transcript. She denies that her remarks are evidence of misconduct. Judge O'Banner-Owens denies

that “under the guise of questioning the defendant, Judge O’Banner-Owens assumed facts and argued on the defendant’s behalf.” These allegations are untrue.

(f) Judge O’Banner-Owens denies this paragraph in the form stated. There was no “apparent developing pattern of improper” conduct.

(g) Judge O’Banner-Owens denies this paragraph, and further denies that she “engaged in misconduct” in the *Lazar* case.

C. (Miscellaneous Ethnocentric Remarks)

(1) Judge O’Banner-Owens denies this paragraph in the form stated. Judge O’Banner-Owens admits that she may have made a comment similar to the one quoted in the Complaint. However, the Complaint is unconstitutionally vague as there are no dates or times when the alleged comments were made. If such comments were, in fact, made, there may have been a rational basis for such a statement. Judge O’Banner-Owens denies that such comments are evidence of misconduct. Judge O’Banner-Owens further denies that such comments are ethnocentric in nature.

8. Paragraphs 8(a)-(r) contain legal conclusions which do not require an answer.

To the extent that the Master or Commission feel that an answer is required, all of the legal conclusions are denied as being untrue.

COUNT IV: MENTAL STATE

9. Judge O'Banner-Owens denies this paragraph as untrue. There is no credible evidence that suggests that Judge O'Banner-Owens' on and off the bench conduct has noticeably deteriorated. The truth is that during the course of its investigation, the Commission spoke to Judge O'Banner-Owens' former court reporter, who had to be separated from her position in Judge O'Banner-Owens' courtroom. After her separation from Judge O'Banner-Owens' courtroom, Laura Smith made up stories to justify her own conduct. In fact, it is critical to note that prior to that separation, Ms. Smith provided an affidavit attesting to Judge O'Banner-Owens' outstanding character when one of the seven cases referenced in the Complaint was originally being investigated. In her affidavit, Ms. Smith stated:

...For approximately the last 7 years, I have been a court reporter at Detroit's 36th District Court and during that entire period, I have worked in the court room of Judge Jeanette O'Banner-Owens.

During the time I have worked for Judge Owens I have never seen her exhibit any conduct demonstrating bias or prejudice against a person because of their race, creed, national origin, gender, or any other reason.

Reflecting back on my 7 years of service at the 36th District Court, which I consider to be highly diverse in terms of the race and ethnic backgrounds of those who come before the court, I can state categorically that on the average workday, persons from all walks of life and assorted ethnic backgrounds appear before the court. I further believe that **at no time have I seen Judge Owens say or do anything that would even remotely suggest that she has a bias or is prejudiced against persons who speak English with an accent....**

See Exhibit 7 (emphasis added).

A. (Events of late July 2005)

- (1) Judge O'Banner-Owens admits this paragraph.
- (2) Judge O'Banner-Owens denies this paragraph in the form stated. Judge O'Banner-Owens denies that she "broke into the officers' conversation." She admits that she made a statement similar to the one quoted in the Complaint. Judge O'Banner-Owens denies that such a statement is evidence of misconduct. Further, the undersigned obtained a statement from Officer Derek Triplett (one of the officers referenced in the Complaint), who was present during the incident in question. Officer Triplett stated:

I am a court officer at the 36th District Court. In July, 2005, I recall an incident that occurred in Judge Owens courtroom, although I am not certain of the exact date. I have not been assigned to Judge Owens courtroom and on this date, I just walked into her courtroom to say hello. To the best of my memory, court was no longer in session, and Officer Bishop, Ms. Smith and I were in the courtroom when the Judge stepped in and said hello to me. We exchanged a few friendly words and she informed me that she was a little upset because she couldn't find her purse.

While she was in the courtroom she made a comment to the effect of "when intelligence leaves the room, only ignorance remains." **The comment was not directed at any specific person. I personally did not know to what she was referring. All that I know, is that the comment was made in a matter of fact fashion and was not made in a demeaning, intimidating tone, nor was it directed at anyone in particular. I personally did not take offense to it.** After making the comment, she left. I stayed for a few more minutes and also left when I was done with my

work.

See Exhibit 8 (emphasis added).

- (3) Judge O'Banner-Owens denies this paragraph in the form stated. Ms. Smith literally pushed her way into Judge O'Banner-Owens' office and became emotionally and verbally combative. Judge O'Banner-Owens was fearful for her safety, closed her door to prevent Ms. Smith from assaulting her.
- (4) Judge O'Banner-Owens denies this paragraph. Judge O'Banner-Owens would add that Ms. Smith appeared for work that morning in an extremely irritable mood. Ms. Smith became verbally and even physically assaultive with Judge O'Banner-Owens, and she became afraid of Ms. Smith. During the confrontation, Ms. Smith tore up pictures of Judge O'Banner-Owens' children while in Judge O'Banner-Owens' chambers.
- (5) Judge O'Banner-Owens denies this paragraph in the form stated. Judge O'Banner-Owens remained in her chambers with the door closed for her personal safety.
- (6) Judge O'Banner-Owens admits this paragraph.
- (7) Judge O'Banner-Owens admits this paragraph. Judge O'Banner-Owens told Ms. Whitby that she was displeased with Ms. Smith, was afraid of her, and did not want to have further contact with her.

- (8) Judge O'Banner-Owens denies this paragraph as untrue. Judge O'Banner-Owens incorporates her response to Paragraphs 9(A)(1)-(4).

B. (Events of October 27, 2006)

- (1) Judge O'Banner-Owens denies this paragraph in the form stated. Judge O'Banner-Owens is unaware as to where James Abbott was seated in her courtroom. Further, it is critical to note that Mr. Abbott had not substituted into the *Worldwide* case.
- (2) Judge O'Banner-Owens denies this paragraph. The plaintiff filed a motion for summary judgment, which was scheduled for hearing on October 27, 2006. Judge O'Banner-Owens was prepared to hear oral arguments from the parties with respect to that motion. Judge O'Banner-Owens had no knowledge that a consent judgment had been reached.
- (3) Judge O'Banner-Owens denies this paragraph in the form stated. Mr. Abbott frequently stands in for other attorneys at 36th District Court. It was logical for Judge O'Banner-Owens to inquire as to whether Mr. Abbott was standing in on the remaining cases where counsel did not appear.
- (4) Judge O'Banner-Owens denies this paragraph in the form stated. Judge O'Banner-Owens did learn after the fact that Mr. Abbott was not standing in on the other cases. Judge O'Banner-Owens would add that Mr. Abbott had a cell phone in his hand and it appeared to Judge O'Banner-Owens that he was going to make a call while court proceedings were being

conducted. Judge O'Banner-Owens then asked Mr. Abbott to leave the courtroom.

Appended is the transcript from October 27, 2006 regarding *Pallisades Collection v Darnell Jones*, Case No. 06-130186. At page three, the following exchange occurred between Judge O'Banner-Owens and Mr. Abbott:

THE COURT: Palisades Collection, LLC, Darnel Jones, Abramson and - - Wolfpoff and Abramson. **You can do the backstroke and get the phone out of the court.** I still need the attorney of record. Mr. Paul T. Olivier is the attorney, not Mr. Abbott. No one showed. I have a no show on it.

MR. ABBOTT: I'm here for Mr. - -

THE COURT: That's interesting, but I'm requiring - - I know, counselor, you hear me talking to you.

See Exhibit 9 (emphasis added).

Beth Tomasi, Judge O'Banner-Owens' current court reporter, recalled the events surrounding Mr. Abbott and his cell phone as follows:

The Judge was preparing to handle her civil matters that were scheduled on her docket. Attorney James Abbott appeared on behalf of the attorney of record in Worldwide Asset Purchasing v Denise Dickerson. **As I recall, Mr. Abbott came into the Judge's courtroom with his cell phone in hand and it appeared that he was going to make or receive a telephone call. The Judge kindly requested that Mr. Abbott leave the courtroom, as cell phone use is never allowed during court proceedings.**

See Exhibit 10 (emphasis added).

The undersigned also obtained a statement from the defendant in the *Worldwide* case, Denise R. Dickerson. Ms. Dickerson's recollection of October 27, 2006 is as follows:

I appeared in court October 27, 2006. I spoke to James Abbott regarding my case, I signed a consent form and then I went inside the court room to sit down, Mr. Abbott came in shortly after, as he came in, the Judge started talking to him about something that I didn't understand. **She then told Mr. Abbott to leave the courtroom because he had his cell phone in his hand.** When Mr. Abbott came back into the courtroom Judge Owens called a recess. Mr. Abbott and I left the courtroom, he told me to go to lunch at first and then he told me to wait, because he was going to try to find another judge so I waited and waited. Finally, his assistant told me to go to lunch. I came back and Mr. Abbott came and got me, we went to the Chief Judge and she said there was nothing she could do because Judge Owens already made her judgement [sic].

See Exhibit 11 (emphasis added).

- (5) Judge O'Banner-Owens admits this paragraph in part and denies it in part. Judge O'Banner-Owens admits that Ms. Maxwell told her that Mr. Abbott was not appearing on the other cases. Judge O'Banner-Owens denies that Ms. Maxwell told her about a consent judgment.
- (6) Judge O'Banner-Owens denies this paragraph as being untrue. Judge O'Banner-Owens did not "become angry" with Ms. Maxwell. Judge O'Banner-Owens denies that she made "deprecatory comments" towards

or about Ms. Maxwell. Judge O'Banner-Owens denies that she "commented to the effect that [Ms. Maxwell] did not run the courtroom."

- (7) Judge O'Banner-Owens admits this paragraph.
- (8) Judge O'Banner-Owens neither admits nor denies this paragraph, as Judge O'Banner-Owens has no personal knowledge of the referenced events. Judge O'Banner-Owens does admit that Ms. Maxwell left the courtroom at that time.
- (9) Judge O'Banner-Owens neither admits nor denies this paragraph, as Judge O'Banner-Owens has no personal knowledge of the referenced events. Mr. Abbott was not present in the courtroom at the time the *Worldwide* case was called and the matter was dismissed, but Judge O'Banner-Owens is unaware of whether Mr. Abbott returned to the courtroom and who, if anyone, was in the courtroom at that time.
- (10) Judge O'Banner-Owens neither admits nor denies the first portion of this paragraph, as she has no personal knowledge of what Mr. Abbott did after he left the courtroom. Judge O'Banner-Owens does admit that she dismissed the case, and would add that she did so because when the case was called, neither the plaintiff's attorney nor the defendant were in the courtroom.
- (11) Judge O'Banner-Owens denies this paragraph in the form stated. Judge O'Banner-Owens did dismiss the case, but her premise that the plaintiff

had not appeared was not "false" based upon what she knew at the time.

Judge O'Banner-Owens incorporates by reference her responses to Paragraphs 9(B)(9) and 9(B)(10).

C. (Psychological Examinations)

Preliminary Statement as to Paragraphs C(1)-(3) of the Complaint

The medical evaluations referred to at pages 27 through 30 of the Complaint lack credibility because of tainted procedures utilized by the Commission, its staff, and the three referenced doctors. Judge O'Banner-Owens voluntarily submitted to examinations by three doctors at the request of the Commission because she incorrectly believed she would be treated fairly. Prior to each of the doctors examining Judge O'Banner-Owens, the Commission provided an eight-page letter containing false allegations, similar to the allegations contained in the Complaint. Each of the three doctors relied very heavily upon the information contained in the eight-page letter. That fact is evidenced by the doctors' reports, which contained actual references to false and defamatory information from the eight-page letter.

Further, despite repeated demands by Judge O'Banner-Owens' counsel for access to the eight-page letter, the Commission has steadfastly refused to provide a copy to the undersigned. Judge O'Banner-Owens went as far as to file a superintending control action in the Michigan Supreme Court requesting a copy of the eight-page letter. The Commission opposed Judge O'Banner-Owens' request for the letter. The Michigan Supreme Court, in an order dated April 26, 2006, indicated that Judge O'Banner-Owens was not entitled to the eight-page letter, unless and until a formal complaint was filed. The Complaint was filed on March 29, 2007. As recently as

April 6, 2007, the Commission once again refused to provide Judge O'Banner-Owens' counsel with the eight-page letter, by indicating that it will be provided to Judge O'Banner-Owens at a later time.

Furthermore, none of the doctors who examined Judge O'Banner-Owens made any direct observations of psychopathic behavior or dementia. They nevertheless speculated that there must be some problem with her on the basis of the inaccurate information provided in the eight-page letter that Judge O'Banner-Owens had no opportunity to refute. Accordingly, the evaluations performed by the doctors at the Commission's request are severely tainted and the resultant speculative assertions of the suspected mental illness in their reports must be rejected by this Court.

- (1) This paragraph is denied in the form stated. Dr. Ager, after meeting with Judge O'Banner-Owens on only one occasion, rendered erroneous findings based upon inaccurate information provided to him by the Commission. His evaluation was neither fair, nor thorough.

It is important to note that despite Dr. Ager's unfortunate bias resulting in part from inaccurate information, he made several observations that suggest normalcy for Judge O'Banner-Owens:

- **SENSORIUM**
Was clear.
She was alert and oriented to time, place and person.
- **MENTAL GRASPS/ABSTRACT THINKING**
She was able to interpret the 'spilled milk' proverb.
- **INTELLIGENCE**
Her IQ was average and consistent with her educational and social background.

(2) This paragraph is denied in the form stated. Dr. Greiffenstein, after meeting with Judge O'Banner-Owens on only one occasion, rendered erroneous findings based upon inaccurate information provided to him by the Commission. His evaluation was neither fair, nor thorough.

It is important to note that despite Dr. Greiffenstein's unfortunate bias resulting in part from inaccurate information, he made far more observations that suggest normalcy for Judge O'Banner-Owens:

- The Judge general cognitive capability showed general capacity to solve thinking problems to be in the average range.
- Verbal symbolic problem solving was in the average range.
- Sustained attention and psychomotor speed is within normal limits.
- Boston Naming score – unremarkable – a finding negative for aphasia.
- The Judge arrived for the examination on time and unaccompanied and had no difficulties finding it.
- Physical appearance was that of a 5'3", 155 lb., meticulously dressed female who appeared her stated age.
- Nothing inappropriate or bizarre about her appearance.
- Her gait was narrow based, steadied and she relied on prosthetic devices to ambulate.
- Observed posture was unremarkable and motor functions were negative for multiple pain behaviors, tremors, verbal or motor tics, odd mannerisms or ataxia.
- Gross Sensory Function indicated adequate hearing, adequate eyesight with glasses.
- Her eye contact was direct.

- Her overall demeanor was pleasant and serious.
- Gross attention and concentration were sustained across the entire interview without evidence for distractibility or psychomotor retardation.
- Speech was well-articulated and fluent and thought production spontaneous.
- Auditory comprehension was intact to history seeking questions.
- I did not see any pervasive word finding problems.
- She seemed to have good grasp of recent events.
- Organization of her thought was characterized by good topic maintenance.
- There was no evidence for hallucinations, delusions, or grandiosity.
- The Judge is functional with limitations.
- I am unable to identify any psycho pathology of clinical proportions.
- No evidence for paranoia of clinical proportions.
- There is no evidence for Depression or Anxiety Disorder.
- No evidence for any Organic Personality Disorder.
- (For example) there was no coarsening of behavior, no profanity, and no impulsivity. Her demeanor is controlled and careful.
- Her denial is not clinical denial, meaning there is no obvious defect that the judge is denying. The Judge is just being defensive in fighting the allegations.
- It would be very difficult for somebody with true clinical paranoia (for example) to successfully hide such a problem consistently.
- Formal Diagnoses – Judge does not meet criteria for dementia.

- There is no supportable formal diagnosis of major emotional or personality disorder this visit.
- Psychologically, the Judge demonstrates defensiveness, some eccentricities, and vanities but nothing that would be considered a clinical mental health issue.

(3) This paragraph is denied in the form stated. Dr. Sahn, after meeting with Judge O'Banner-Owens on only one occasion, rendered erroneous findings based upon inaccurate information provided to him by the Commission. His evaluation was neither fair, nor thorough.

It is important to note that not only does Dr. Sahn fail to make a diagnosis of dementia or any other mental illness, despite his unfortunate bias resulting in part from inaccurate information, he too made several observations that suggest normalcy for Judge O'Banner-Owens.

- **GENERAL:** Presents as a well-groomed business-like lady, with briefcase. Her general demeanor was one of someone who is anxious to tell me about her work, her volunteerism, and her activities in the community but in a soft spoken confident manner, not in a brash or abrasive manner. She was cooperative and her personal hygiene and dress were immaculate.

- **MENTAL STATUS:**

She was alert and fully oriented to person, place, and exact date.

She had an excellent fund of general knowledge on casual conversation.

There was no evidence of communication disturbance, dysnomia, dysphasia or such.

She could perform simple calculations well, and easily remember three objects over a five-minute period.

10. Paragraphs 10(a)-(r) contain legal conclusions which do not require an answer.

To the extent that the Master or Commission feels that an answer is required, all of the legal conclusions are denied as being untrue.

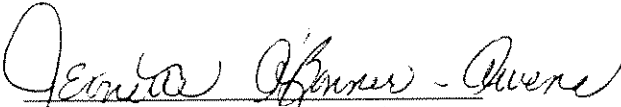
AFFIRMATIVE DEFENSES

- 1) Laches: Judge O'Banner-Owens is prejudiced by the delay in defending the allegations of the Complaint, which in many instances date back five years. This delay will result in faded memories and/or lost evidence.
- 2) Res Judicata/Collateral Estoppel: The Commission's previous resolution of files with admonishment or cautionary letters precludes inclusion of those files in the Complaint.
- 3) Discrimination: The Commission is discriminating against Judge O'Banner-Owens because of her protected personal characteristics and because the court she serves on is located in Detroit. Judge O'Banner-Owens' conduct is being judged based upon standards not applied to judges who sit in other courts throughout Michigan.
- 4) Unconstitutional Vagueness: The Complaint is unconstitutionally vague, and denies Judge O'Banner-Owens' right to due process, in that Count I Paragraph 3, Count II Paragraph 5 and Count III Paragraph 7 include language stating, "Examples include, but are not limited, to." That charging language will permit the Commission to attempt to admit evidence regarding uncharged conduct.

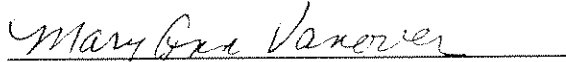
5) Abridgement of First Amendment Rights: The Complaint seeks to discipline Judge O'Banner-Owens on the basis of her exercise of rights protected by the United States Constitution, Amend 1.

6) Judge O'Banner-Owens reserves the right to amend or supplement these affirmative defenses as this case proceeds and discovery is provided.

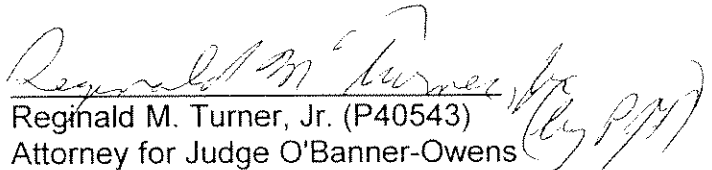
The above statements are true to the best of my knowledge, information, and belief.



Hon. Jeanette O'Banner Owens

The foregoing instrument was sworn to before me this 11th day of April 2007, by
Hon. Jeanette O'Banner Owens.


Mary Ann Vanover
Notary Public, Wayne County, MI:
My commission expires:

Respectfully submitted by:


Reginald M. Turner, Jr. (P40543)
Attorney for Judge O'Banner-Owens
Clark Hill PLC
500 Woodward Avenue, Ste. 3500
Detroit, Michigan 48226
(313) 965-8318


Philip J. Thomas (P31298)
Attorney for Judge O'Banner-Owens
15450 E. Jefferson Ave., Ste. 160
Grosse Pointe Park, Michigan 48230
(313) 821-2600

Dated: April 11, 2007